STATE OF MICHIGAN

COURT OF APPEALS

In re A LAROCK, Minor.

UNPUBLISHED
May 12, 2015

No. 323347
Jackson Circuit Court
Family Division
LC No. 13-000141-NA

Before: BOONSTRA, P.J., and SAAD and MURRAY, JJ.

PER CURIAM.

Respondent-mother appeals by right from the trial court's order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(*ii*) (desertion), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood that child will be harmed if returned to the parent). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

AL was born in 2010. Respondent-mother is AL's biological mother. Respondent-mother and respondent-father (AL's legal father at the time the proceedings commenced)[1] lived together in Florida when AL was born. Around May 2012, respondent-mother and respondent-father allowed AL's paternal grandmother, Theresa Rudd, to bring AL from Florida to Michigan and care for her. Respondent-father subsequently moved to Michigan to stay with Rudd and AL, while respondent-mother remained in Florida. Respondent-mother last physically saw AL in July 2012.

The proceedings in this case began in January 2013 after a fire destroyed Rudd's home, where respondent-father and AL were staying. Only respondent-father was present at the time. Law enforcement officials believed that the fire was caused by methamphetamine production. Respondent-father denied that this was the cause of the fire, although he did admit that he used methamphetamine. On January 11, 2013, the trial court entered an ex parte order removing AL from respondent-father's care and placing her in petitioner's custody. AL remained with Rudd and her husband, who had secured new living accommodations. On the same day, petitioner

[1] Respondent -father voluntarily terminated his parental rights to AL on February 12, 2014. He is not a party to this appeal.

filed a petition requesting that trial court take jurisdiction under MCL 712A.2b(1) (parent neglected or refused to provide proper care or support) and (2) (home environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity, had become unfit for the child). The allegations set forth respondent-father's history of substance abuse and the circumstances of the fire.

At the time this case was initiated, the petition alleged that respondent-mother was in jail in Baker County, Florida for a probation violation in connection with her 2008 convictions for burglary of an occupied dwelling and grand theft.

A preliminary hearing was held on January 16, 2013. Respondent-mother was not present, as she remained incarcerated in Baker County, Florida. According to Curtis Wright, an employee of petitioner, he had attempted the day before the hearing to facilitate respondent-mother's participation via telephone, but the jail facility did not have sufficient time to make that arrangement. Respondent-mother was, however, represented by counsel. All parties waived the probable cause determination and the trial court found that there was probable cause to believe that one or more of the allegations in the petition was true. The trial court authorized the petition and ordered AL's continued placement with Rudd. The court ordered supervised parenting time for respondent-father and suspended respondent-mother's parenting time until she presented herself to petitioner for a social assessment.

On January 29, 2013, respondent-mother was sentenced to 13 months' imprisonment for her probation violation. She was thereafter transferred from the Baker County jail to a correctional facility in Ocala, Florida. It does not appear that petitioner or the trial court was made aware of respondent-mother's transfer until sometime in February 2013. Eventually, the trial court obtained a telephone number to the correctional facility from the Baker County jail, but the name and address of the facility were not provided.

On March 12, 2013, respondent-father entered a no contest plea to the allegations in the petition. The trial court accepted the plea and assumed jurisdiction over AL pursuant to MCL 712A.2(b)(2). The trial court ordered AL's continued placement, with supervised parenting time for respondent-father. Respondent-mother's parenting time remained suspended until she presented herself for a social assessment. Respondent-mother did not participate in the March 12 proceeding. The trial court attempted to reach respondent-mother at her new correctional facility using the telephone number given to it by the Baker County jail, but the number was not in service. Nonetheless, the proceeding continued, as the trial court indicated that respondent-mother was provided with notice of the proceeding through the Baker County jail and therefore "could have contacted us to let us know where she's going to be."

The March 19, 2013 initial court report of petitioner indicated that petitioner had referred respondent-father to a number of services, including a psychological evaluation, a substance abuse assessment, random drug screens, a parenting class, and parenting time visits. With respect to respondent-mother, she was "unable to participate" in services because of her incarceration in Florida. Dana Poliziani, her caseworker, had only recently obtained respondent-mother's new contact information, and planned to contact respondent-mother in order to update her on the case and ask her if any services were available to her while she was incarcerated.

A dispositional hearing was held on March 27, 2013. Respondent-mother did not participate in the proceeding, and the trial court again did not have a telephone number for her correctional facility. The trial court did note, however, that proper notice of the proceeding had been given. Respondent-mother was represented by counsel. The proceeding continued in respondent-mother's absence, at the conclusion of which the trial court continued AL's placement with Rudd and ordered respondent-father to comply with the case service plan. Respondent-father was provided supervised parenting time.

A combined review and permanency planning hearing was held on June 19, 2013. Respondent-mother participated via telephone from the Florida correctional facility. She indicated that her earliest release date was October 9, 2013, but that her expected release date was November 5, 2013. The trial court asked her if there were any services, such as parenting classes or drug treatment programs, that she could participate in while incarcerated. Respondent-mother responded affirmatively, but indicated that she was not eligible for those programs because they were "six to nine month" programs and she would not have enough time to complete them. Respondent-mother did attend some mental health classes, however, while she was at the Baker County jail. At the conclusion of the hearing, the trial court adopted the agency's recommendations and ordered respondent-father to comply with services. As to respondent-mother, in light of the fact that she was ineligible for services while in prison, the trial court told her that there was "nothing for [it] to order [her] to do aside from stay in contact with the caseworker[.]" However, upon her release from prison, if she "want[ed] to come to Michigan," the trial court would "get [her] in a service plan" if the case was still open.

The August 6, 2013 petitioner-updated court report indicated that respondent-father continued to make poor progress on his service plan. With respect to respondent-mother, the agency had been in contact with her via mail, and had invited her to participate in a Family Team Meeting by telephone, but respondent-mother was unable to do so because the prison was on lockdown at the time of the meeting.

A combined review and permanency planning hearing was held on August 28, 2013. Respondent-mother did not participate, although she was represented by counsel; the trial court contacted the prison facility, but it was currently under quarantine. Respondent-father's parenting time remained supervised, while respondent-mother's parenting time remained suspended.

The November 13, 2013 petitioner-updated court report indicated that respondent-father continued to make poor progress on his service plan. With respect to respondent-mother, the agency had been in contact with her via mail, and had invited her to participate in a Family Team Meeting by telephone, but several attempts to reach respondent-mother on the day of the meeting were unsuccessful, as the number was busy.

A combined review and permanency planning hearing was held on November 20, 2013. Respondent-mother was not present, although she was represented by counsel. LeAnna Scott, respondent-mother's new caseworker, indicated that she had just recently learned that

respondent-mother had been released from prison in October. Respondent-mother had not contacted the agency since that time, although she was in contact with Rudd. According to Rudd, respondent-mother Skyped[2] with AL once in November 2013. Now that respondent-mother was out of prison, the agency wanted her to "make herself available . . . for a social assessment" so that it could explore the possibility for supervised parenting time. The trial court asked if Rudd had any input. She responded that, in her opinion, the parents were "comfortable with AL being placed with [her] and they [did not] really have any urgency to take any steps to make any changes." The parents knew that they could continue having contact with AL while she was in Rudd's care, and therefore had no need to take responsibility; it was "the best of both worlds." Scott stated that petitioner would like more time to work with respondent-mother before changing the permanency planning goal. With that, the trial court declined to change the permanency planning goal and adopted the agency's recommendations, kept the permanency planning goal as reunification, and ordered both parents to comply with services. Specifically, with respect to respondent-mother, she was ordered to contact the agency and facilitate a social assessment. Respondent-father's parenting time remained supervised, while respondent-mother's parenting time remained suspended.

The February 3, 2014 petitioner-updated court report indicated that respondent-father continued to make poor progress on his service plan. With respect to respondent-mother, she had not had any contact with the agency since her release from prison, although she did have contact with AL through telephone calls supervised by Rudd. Rudd provided the agency with respondent-mother's telephone number and indicated that she had also told respondent-mother to contact the agency. Scott attempted to reach respondent-mother using this telephone number, but respondent-mother did not answer. Scott left her a voicemail. When Scott called respondent-mother again the following day, the number was no longer in service. Scott attempted to find an address for respondent-mother via the internet (including searching on Facebook), initially to no avail. Scott eventually did find a possible address for respondent-mother and sent her a certified letter, which was ultimately returned as undeliverable. Scott indicated that if no further progress was made, she would seek a termination petition. Scott recommended that AL remain in petitioner custody; that respondent-father comply with services; and that respondent-mother contact the agency to make herself available for a social assessment. Further, Scott recommended that all contact between respondent-mother and AL—including telephone contact—be suspended until respondent-mother made herself available.

A combined review and permanency planning hearing was held on February 12, 2014. Respondent-mother was not present. Respondent-mother's attorney indicated that he had not had any contact with her. In response to the trial court's inquiry as to why a goal change was not being recommended, Scott indicated that she still felt respondent-mother had not had enough time, given the fact that she had just been released from prison in October. Notwithstanding Scott's recommendation, the trial court ordered that the permanency planning goal be changed to adoption. The trial court ordered the parents to continue complying with services "until a

[2] "Skype" is a software program that allows individuals to video chat with one another from their computers or mobile devices.

[supplemental] petition is filed[.]" Respondent-father's parenting time remained supervised, while respondent-mother's parenting time remained suspended.

On the evening of February 13, 2014, respondent-mother contacted Scott and left her a message. Scott returned the call the following day. According to Scott, respondent-mother had learned that AL was going to be in Florida with Rudd in the near future and she wanted to know what she had to do to see AL. Scott explained to respondent-mother what was happening in the case and further explained that respondent-mother needed to complete a social assessment. Respondent-mother responded by indicating that AL was with her grandmother, which was the best place for her, and respondent-mother did not "really want to disturb that." When Scott asked respondent-mother to clarify what she meant by that, respondent-mother simply replied "just e-mail me something . . . that says what I have to do to see [AL] next week." Respondent-mother did not provide Scott with her own e-mail address, but rather gave Scott her sister's e-mail address. After this hearing, respondent-father contacted Scott and indicated that he would like to voluntarily release his parental rights.

A supplemental petition was filed on February 25, 2014, seeking the termination of both parents' parental rights. With respect to respondent-mother, the supplemental petition alleged:

> 19. [Respondent-mother] was incarcerated during the majority of 2013. She was released in October 2013. It was ordered that [respondent-mother] contact the caseworker to participate in a social assessment.
>
> 20. The worker sent monthly letters to [respondent-mother] updating her on AL and asking for updates on services she was receiving in prison. The letters from October and November were returned to the caseworker. The caseworker was given a phone number for [respondent-mother] by Theresa Rudd (relative placement) and the worker left a message for [respondent-mother]. The following week the number was no longer in service.
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> 21. [Respondent-mother] Skyped with AL in November 2013. [Respondent-mother] spoke to AL twice on the phone, once in December 2013 and once in January 2014. She also texted Theresa Rudd in December asking for her address to send AL Christmas presents. [Rudd] never received any presents for AL.
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> 22. Theresa Rudd reported to the caseworker that [respondent-mother] texted her twice[,] a month apart, asking for the caseworker's phone number, each from a different phone number.
>
> 23. The caseworker used Internet searches to attempt to find contact information for [respondent-mother]. An address was located and a certified letter was sent. It turned out to be an old address.
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> 24. On February 13th 2014, [respondent-mother] called the caseworker. The caseworker asked her why she waited so long to get in touch and [respondent-mother] said she had phone troubles.

> 25. During the phone call, [respondent-mother] asked what she needed to do to see her daughter. The worker explained the social assessment and that services would be provided based on that. [Respondent-mother] stated that AL is in a good place and she doesn't want to change that. She then mentioned that AL was going to be in Florida soon and just wanted to know what to do so that she could see her while she was Florida.
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> 26. The caseworker attempted to call [respondent-mother] on 2-24-2014 and a voicemail was left for [respondent-mother] to return the call. As of the filing of this petition, [respondent-mother] has not participated in a social assessment. [Allegations, ¶¶ 19-26, attached to the February 25, 2014 Supplemental Petition.]

The supplemental petition further alleged that termination of both parents' parental rights was in AL's best interests "due to the length of time the child has been in care and the lack of consistent contact by [respondent-mother]." There was no parental bond between AL and respondent-mother. AL needed consistency, permanency, and stability. Petitioner sought termination under MCL 712A.19b(3)(a)(*ii*), (c)(*i*) (failure to rectify conditions of adjudication), (c)(*ii*) (failure to rectify other conditions causing child to come within the court's jurisdiction), (g), and (j).[3]

A combined review and permanency planning hearing was held on February 25, 2014. Respondent-mother was not present, although she was represented by her attorney. Scott indicated that she had not heard from respondent-mother since their conversation on February 14, 2014. In light of the supplemental petition, the trial court indicated that it would "not order the parents to comply with services." The trial court ordered AL's continued placement. Respondent-father's parenting time remained supervised, while respondent-mother's parenting time remained suspended.

The March 27, 2014 petitioner-updated court report indicated that respondent-father had made no progress, and continued to express his desire to voluntarily relinquish his parental rights. With respect to respondent-mother, Scott indicated that she had been in contact with respondent-mother only twice since February. During one conversation, Scott asked respondent-mother why it took her four months to contact the agency. Respondent-mother responded that she was "trying to get things together." Scott informed respondent-mother that the trial court had ordered no more services to be offered, but told respondent-mother that she could participate in services voluntarily in Florida if she so desired. Scott discussed those services with respondent-mother, and respondent-mother indicated that she could participate in drug screens and parenting classes. Scott asked respondent-mother about her current employment and housing situations. Respondent-mother responded that she was currently working as a "dancer" and that she had recently answered an ad on "Craigslist" for a room for rent and was renting from a single father with daughters. Scott asked respondent-mother if she had used illegal substances lately. Respondent-mother hesitated before saying no, and then clarified "except for marijuana, but that is okay because AL doesn't live with me right now." The agency had no further contact with

[3] The petition did not indicate which statutory grounds applied to which parent.

respondent-mother after this telephone call. Scott recommended that the parental rights of both parents be terminated.

The April 8, 2014 petitioner-updated court report indicated that respondent-father had made no progress, and continued to express his desire to voluntarily relinquish his parental rights. With respect to respondent-mother, Scott indicated that she had not had any recent contact with her, although Scott did send respondent-mother a letter informing her of the next court date.

A bench trial commenced on May 6, 2014. Respondent-mother was present in person. The trial was ultimately adjourned after respondent-mother's attorney moved to withdraw his representation based on a breakdown of the attorney-client relationship. Thereafter, the hearing proceeded as a review hearing, with respondent-mother being represented by a new court-appointed attorney. Respondent-mother asked the trial court if it would be willing to allow her to see AL before respondent-mother returned to Florida. Scott recommended, however, that respondent-mother's parenting time remain suspended because respondent-mother never participated in a social assessment; "[b]y the time she contacted the agency it was – services had been suspended[.]" Scott opined that it had been "too long" since AL had last seen respondent-mother, and AL therefore did not know her. The trial court asked Rudd what her position was on allowing respondent-mother to see AL. Rudd initially responded that she had no problem making that arrangement, but expressed concern about the effect on AL if respondent-mother were to see her in person and then not see her again for an extended period of time. Rudd opined, however, that AL wanted "nothing more than to have a mother and she would probably recognize [respondent-mother] as her mother." At the conclusion of the hearing, the trial court continued AL's placement with petitioner and ordered that reasonable efforts for reunification "not be made." Respondent-father's parenting time remained supervised, while respondent-mother's parenting time remained suspended; although not directly addressed by the trial court, it appears that respondent's request to visit AL before she returned to Florida was not granted.

A hearing was held on June 17, 2014. Respondent-mother was not present, although she again was represented by counsel. In light of the Supreme Court's recent decision in *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014), the trial court determined that it could not proceed on the February 25, 2014 supplemental petition with respect to respondent-mother because she had never been adjudicated. The prosecution agreed to withdraw the supplemental petition and file a new one.

A new supplemental petition seeking to adjudicate respondent-mother and seeking termination of both parents' parental rights was filed on June 17, 2014. The petition alleged that jurisdiction was appropriate under MCL 712A.2(b)(1) and (2). With respect to respondent-mother, the petition repeated the allegations contained in the first supplemental petition as well as the following new allegations:

> 26. The caseworker has continued mailing [respondent-mother] letters with one being sent in March 2014 and April 2014. [Respondent-mother] signed for both letters.

27. The worker spoke to [respondent-mother] on March 11th, 2014. [Respondent-mother] was inquiring about services. It was explained that the court ordered no services be provided by the Agency, however, she was able to participate on her own. She was encouraged to have drug screens done and attend a parenting class and bring the documentation to court. [Respondent-mother] also stated that she was "dancing" and couldn't obtain a good job because of her violent offender classification. She stated that she was living with a male that she found on Craigslist. She also admitted that she continues to smoke marijuana.

28. At the May 6th, 2014, court hearing, [respondent-mother] was in attendance, but didn't provide any documents for services she may have done.

29. At the court hearing on May 6th, [respondent-mother] stated that she has not seen AL since June of 2012.

30. [Respondent-mother] Skyped with AL in November 2013. [Respondent-mother] spoke to AL twice on the phone, once in December 2013 and once in January 2014. She also texted Theresa Rudd in December asking for her address to send AL Christmas presents. [Rudd] never received any presents for AL.

31. Theresa Rudd was in Florida in February 2014 and attempted to arrange a visit with [respondent-mother] and AL. She was an hour from [respondent-mother]'s residence and [respondent-mother] did not make the drive to see AL at that time.

32. On June 17, 2014, [respondent-father] stated that in a recent phone conversation on May 6th 2014, with [respondent-mother] that she admitted to him that she is selling heroin for a dealer.

As with the February 25, 2014 supplemental petition, the new supplemental petition alleged that termination of both parents' parental rights was in AL's best interests "due to the length of time the child has been in care and the lack of consistent contact by [respondent-mother]." There was no parental bond between AL and respondent-mother. AL needed consistency, permanency, and stability. Petitioner sought termination under MCL 712A.19b(3)(a)(*ii*), (c)(*i*) (failure to rectify conditions of adjudication), (c)(*ii*) (failure to rectify other conditions causing child to come within the court's jurisdiction), (g), and (j).[4]

A preliminary hearing was held on June 18, 2014. Respondent-mother participated via telephone and waived the probable cause finding. The trial court found that there was sufficient probable cause to believe that one or more allegations against respondent-mother in the petition was true, and authorized the petition. Respondent-mother's parenting time remained suspended.

[4] Again, the petition did not clarify which statutory grounds applied to which parent.

The July 7, 2014 petitioner-updated court report indicated that respondent-father maintained his desire to voluntarily relinquish his parental rights so that Rudd could adopt AL. With respect to respondent-mother, Scott indicated that there had been little contact with her, but noted that she did receive a certificate from respondent-mother via email showing that respondent-mother had completed a four-hour online parenting class. The agency maintained its recommendation that the parental rights of both parents be terminated.

A combined adjudication trial and dispositional hearing was held on July 29, 2014. Respondent-mother participated via telephone. Respondent-mother testified that AL was placed in Rudd's care in May 2012, and that she had not seen AL in person since July 2012. At the time this case began in January 2013, respondent-mother was incarcerated and therefore unable to provide proper care and custody for AL. Throughout her incarceration, petitioner kept in contact with respondent-mother via mail to update her on AL's progress and what was going on with the case. Respondent-mother recalled Scott asking her whether she could participate in services while incarcerated, but reiterated that those services were unavailable to her because of the short time she was scheduled to remain incarcerated. When she was released from prison, respondent-mother initially lived with a male friend, but that situation did not work out, so she moved in with a female friend in November 2013. She did not have contact with the agency during this time period, although she did have contact with AL, through Rudd, via telephone calls and Skype. Respondent-mother last spoke to AL two or three weeks before the hearing, through respondent-father.

Respondent-mother could not recall petitioner informing her that she needed to complete a social assessment in order to determine what services could assist her, and did not recall seeing any paperwork from the trial court ordering her to complete such an assessment. With regard to other services, no one ever informed respondent-mother that they wanted her to participate in any other services. Then, in February 2014, respondent-mother learned that services were no longer available to her. At that point, petitioner told her that any services she participated in were voluntary, and that she was not court-ordered to do anything. Respondent-mother completed an online parenting class on her own.

Respondent-mother indicated that she had stable housing with her boyfriend and his three children since December 2013 and that there was room for AL. The caseworker never attempted to complete a home study of respondent-mother's home. Respondent-mother had stable employment at a janitorial service since January 2014, and was not using controlled substances. She was physically and financially able to care for AL.

When asked if there were any legal obligations tying her to Florida, respondent-mother responded "no, just family. All of my family is here." Respondent-mother "would have loved" to move to Michigan to be around AL, but she did not have the financial means to do so and did not have a support system in Michigan. When asked why respondent-mother did not attempt to seek custody of AL in Florida, respondent-mother responded that as of February 2014, her understanding was that her parental rights were going to be terminated, that AL was going to be adopted, and that there was nothing more she could do other than keep going to court and participate in voluntary services. She testified, "[N]obody told me how to secure her or what I needed to do." Thus, as far as respondent-mother understood, gaining custody of AL was not an option. Respondent-mother stated that her first court-appointed attorney did not return her

telephone calls, and the first time she ever spoke to him was the first time she appeared in court in person.

Respondent-father also testified. He denied that respondent-mother had spoken with AL three weeks prior. In actuality, respondent-mother had called respondent-father, but AL was outside playing at the time, so respondent-father told her that he would call her back or that she could call him back, "and that was it." To his knowledge, the last time respondent-mother spoke with AL was when respondent-mother appeared for a court hearing in May, and respondent-father let her talk to AL on the telephone.

Rudd testified that the last time respondent-mother physically saw AL was in July 2012. During these proceedings, respondent-mother only Skyped with AL once, in November 2013, and only spoke to AL on the telephone approximately seven times. The last time respondent-mother spoke with AL over the telephone was on Mother's Day in May of 2014. Rudd stated that she had AL with her in Florida in February of 2014 and had attempted to arrange a visit; however, respondent did not make the one-hour trip to see AL. Respondent-mother never sent cards or presents, although she did send a couple of photographs. In Rudd's opinion, AL looked to Rudd as her mother. Also in Rudd's opinion, it was in AL's best interests to terminate respondent-mother's parental rights because Rudd could not see respondent-mother being a stable part of AL's life. Respondent-mother was "not very responsible and she may think of her needs before AL's."

Scott testified that the agency was in contact with respondent-mother from the time these proceedings began and maintained contact with her while she was incarcerated through monthly letters and some telephone calls. Scott personally sent respondent-mother three to four letters after she took over the case in July 2013. Contrary to respondent-mother's earlier testimony, Scott believed that respondent-mother was adequately apprised of everything that was going on in the case during this time, and of her obligations, including the obligation to participate in a social assessment. Upon her release from prison, however, respondent-mother did not have any contact with the agency. Scott did not even know that respondent-mother had been released from prison until talking with Rudd in December 2013, approximately two months after respondent-mother had been released. Scott made attempts to locate and contact respondent-mother, to no avail. It was not until February 2014 that respondent-mother contacted Scott. At that point, according to Scott, the trial court had already ordered services for respondent-mother to be stopped pending a petition for termination. During their conversation, respondent-mother indicated that AL was in a good place and respondent-mother did not want to change that. She simply wanted to know what she could do to see AL when Rudd brought her to Florida. Scott recalled another conversation with respondent-mother in March 2014, wherein Scott informed respondent-mother that she could still participate in services voluntarily. Scott did so because she wanted respondent-mother "to know what she needed to do in case she wanted to continue to try before the termination hearing." The only proof of participation in services that respondent-mother ever provided was the certificate for her online parenting class.

With respect to housing and employment, Scott acknowledged that her only knowledge was what respondent-mother had told her. Specifically, respondent-mother told Scott that she was living with a man she had met through "Craigslist" and that she was working for a janitorial

service. Respondent-mother never provided tangible proof to the agency that she had employment or stable housing.

Scott opined that termination of respondent-mother's parental rights was in AL's best interests. AL had been in Rudd's care for the majority of her life and had not had much contact with respondent-mother. AL needed stability in her life, which respondent-mother could not provide. Scott had not seen a demonstrable bond between respondent-mother and AL. Respondent-mother had not made any efforts, other than the parenting class, to take responsibility for AL's care.

Respondent-mother was recalled to testify on her own behalf. She acknowledged telling Scott in March 2014 that AL was in a good place. However, she was not intending to convey that she did not want to be a part of AL's life. She simply meant that, at that time, AL was better off with Rudd. Respondent-mother admitted using "Craigslist" to rent a room from a man, but indicated that her relationship with that man was strictly platonic. She further admitted that she used marijuana in the past, but indicated that she had quit. Respondent-mother expressed a desire to participate in services in order to regain custody of AL. In her opinion, it was in AL's best interest to be with respondent-mother. Respondent-mother was not a perfect parent, but she made decisions—including the decision to let Rudd care for AL—with AL's best interests in mind.

Following the close of proofs, petitioner first argued that it had presented sufficient evidence to support adjudication under MCL 712A.2(b)(1) and (2). "[W]hether [through] neglect or just outright refusal, [respondent-mother] ha[d] left the child without proper care and custody." She was incarcerated when AL was removed from respondent-father's care, and when she was released, she did not make any efforts to secure custody. With respect to disposition, petitioner first argued that there was sufficient evidence to terminate respondent-mother's parental rights pursuant to MCL 712A.19b(3)(a)(*ii*), on the basis that respondent-mother had abandoned AL. She had not seen or spoken with AL within the last 91 days. Additionally, petitioner argued that termination was proper under MCL 712.19b(3)(g), on the basis that respondent-mother had failed to provide proper care and custody for AL, and it was not likely that she could do so within a reasonable time. Finally, petitioner argued that termination was proper under MCL 712A.19b(3)(j).

Following arguments, the trial court made its findings on the record. First, the trial court found by "clear and convincing evidence" that the statutory grounds for jurisdiction had been proved. Specifically, the trial court indicated that respondent-mother had abandoned AL, and that there was "an unfit home environment by reason of neglect, cruelty, drunkenness, criminality, [or] depravity on the part of the parent." The trial court elaborated that respondent-mother was incarcerated at the time AL was removed from respondent-father's care. Respondent-mother was thus not able to provide proper care and custody. The agency was immediately in contact with respondent-mother, and kept in contact with her during the term of her incarceration. However, respondent-mother did not contact the agency upon her release to become involved in services. There was no barrier to respondent-mother coming to Michigan. Yet, respondent-mother only appeared in person for one court proceeding. Never once during these proceedings did she express to the trial court that she wanted custody of AL. Moreover, respondent-mother "never put any efforts into trying to establish and ensure that she would have

the opportunity to parent AL." Respondent-mother had "criminality issues," and there was accordingly "criminality in the household." Finally, it was "irresponsible" for respondent-mother to meet a roommate on "Craigslist." Thus, respondent-mother, without regard to intent, had failed to provide proper care and custody for AL, and there was no reasonable expectation that she could do so within a reasonable time. The trial court ultimately entered an order of adjudication. The order listed "abandonment" as the only basis for jurisdiction.

Moving to disposition, the trial court found that termination was appropriate under MCL 712A.19b(3)(a)(*ii*) because the evidence established that respondent-mother had only made approximately seven telephone calls to AL during these proceedings, and only saw her once via Skype. There had been no physical contact since July 2012. Clearly, that amounted to abandonment.

The trial court also found that termination was appropriate under MCL 712A.19b(3)(g) because respondent-mother had not provided AL with proper care or custody, and there was no reasonable likelihood that she would be able to do so within a reasonable time.

Finally, the trial court found that termination was appropriate under MCL 712A.19b(3)(j) because there was a reasonable likelihood that AL would be harmed if returned to respondent-mother's care. First, respondent-mother was living with a man she met on "Craigslist." Second, respondent-mother had not provided any documentation that her income or housing was appropriate. Finally, as testified to by respondent-father, respondent-mother had mental health issues. The trial court was thus not convinced that AL could be returned to respondent-mother's care, especially when, according to respondent-father, respondent-mother only wanted custody of AL to spite Rudd ("That's not a parent that's interested in parenting, that's a parent that's interested in harming a child.").

The trial court next found that termination of respondent-mother's parental rights was in AL's best interests, citing the testimony of respondent-father, Rudd, and Scott. AL needed permanence and stability, and that was only possible if respondent-mother's parental rights were terminated.

The trial court subsequently entered an order of disposition and an order terminating respondent-mother's parental rights. This appeal followed.

II. ADJUDICATION

A. ABANDONMENT FINDING

Respondent-mother first argues that the trial court clearly erred in finding a statutory ground for jurisdiction. We disagree. We review a trial court's decision whether to exercise jurisdiction for clear error. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013).

"In Michigan, child protective proceedings comprise two phases: the adjudicative phase and the dispositional phase." *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014). "Generally, a court determines whether it can take jurisdiction over the child in the first place

during the adjudicative phase." *Id*. Jurisdiction is established pursuant to MCL 712A.2(b). *Id*. As relevant to the instant case, that statute provides that a trial court has jurisdiction in proceedings concerning a child under 18 years of age found within the county:

> (1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. . . . [or]
>
> * * *
>
> (2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in. . . .

To exercise jurisdiction over a child, the trial court is required to find that one of these statutory grounds has been proven by a preponderance of the evidence. *In re BZ*, 264 Mich App at 295. In reaching this determination, the trial court is confined to "examin[ing] the child's situation at the time the petition [is] filed," since the statute "speaks in the present tense." *In re MU*, 264 Mich App 270, 279; 690 NW2d 495 (2004).

MCL 712A.2(b)(1) and (2) were both cited by petitioner in its supplemental petition. At the conclusion of the combined adjudication trial and dispositional hearing, the trial court concluded that there was sufficient evidence to adjudicate respondent-mother on the basis that she had abandoned the child.[5] Notably, the trial court also found "an unfit home environment by reason of neglect, cruelty, drunkenness, criminality, [or] depravity" on mother's part. However, the trial court's order of adjudication listed abandonment as its only basis for asserting jurisdiction. "[A] court speaks through its written orders and judgments, not through its oral pronouncements." *In re Contempt of Henry*, 282 Mich App 656, 678; 765 NW2d 44 (2009). Thus, abandonment, as contained in MCL 712A.2(b)(1), was the basis for adjudicating respondent-mother.

The record indicates that respondent-mother last saw AL in person in July 2012 and only communicated with her by phone or video chat a handful of times.

We conclude that the trial court did not clearly err in finding that mother had abandoned the child. Although the mere placement of AL with her father's parents, even without the

[5] Because the trial court found clear and convincing evidence to support the adjudication of respondent-mother, it necessarily found sufficient evidence under the applicable preponderance of the evidence standard. See *Hayes v Hayes*, 209 Mich App 385, 387; 532 NW2d 190 (1995) (describing the clear and convincing evidentiary standard as "more stringent" than the preponderance of the evidence standard).

provision of monetary support, may be insufficient evidence to support a finding of neglect, *In re Nelson*, 190 Mich App 237, 241; 475 NW2d 448 (1991), this Court has approved of a trial court's assertion of jurisdiction under MCL 712A.2(b)(1) where a parent, after placing their child with relatives, takes "little interest" in resuming her parental duties with her child. See *In re BZ*, 264 Mich App 286, 295-296; 690 NW2d 505 (2004).[6] Here, even after her incarceration ended, respondent-mother made no efforts to again become a part of her child's life and failed to even complete an assessment with petitioner or to maintain contact with her caseworker. We conclude that the trial court did not clearly err in finding by a preponderance of the evidence that this basis for jurisdiction was proven.

B. NECESSITY OF ABANDONMENT BY BOTH PARENTS

We further find no merit to respondent-mother's argument that the plain language of MCL 712A.2(b)(1) requires abandonment by both parents. Respondent did not raise this issue before the trial court; this issue is thus reviewed for plain error affecting substantial rights. *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011).

> When reviewing matters of statutory construction, this Court's primary purpose is to discern and give effect to the Legislature's intent. The first criterion in determining intent is the specific language of the statute. The Legislature is presumed to have intended the meaning it has plainly expressed, and if the expressed language is clear, judicial construction is not permitted and the statute must be enforced as written. Additionally, it is important to ensure that words in a statute not be ignored, treated as surplusage, or rendered nugatory. Unless defined in the statute, every word or phrase of a statute will be ascribed its plain and ordinary meaning. [*Robertson v DaimlerChrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002) (citations omitted).]

A statutory provision "is ambiguous only if it irreconcilably conflicts with another provision, or when it is *equally* susceptible to more than a single meaning." *Mayor of Lansing v Pub Service Comm*, 470 Mich 154, 166; 680 NW2d 840 (2004) (internal quotations and citation omitted).

Undoubtedly, MCL 712A.2(b)(1) provides for jurisdiction when a child has been abandoned by his or her "parents." However, such use of the plural term "parents" does not, in and of itself, convey an intent by the Legislature to allow for the assumption of jurisdiction only

[6] This Court has been unable to discover binding precedent defining "abandonment" in this context. Other jurisdictions, whose reasoning may be persuasive, see *Hiner v Mojica*, 271 Mich App 604, 612; 722 NW2d 914 (2006), have described abandonment as willful or intentional conduct on the part of the parent which manifests a settled purpose to forgo all parental duties and relinquish all parental claims to the child. *In re TCB*, 166 NC App 482, 485; 602 SE2d 17 (2004). Accord *Petition of CEH*, 391 A2d 1370, 1373 (DC, 1978); *Hinkle v Lindsey*, 424 So2d 983, 985 (Fla App, 1983); *In re Adoption of DA*, 222 Ill App 3d 73, 78, 164 Ill Dec 696, 583 NE2d 612 (1991); *In re Adoption of MLL*, 810 NE2d 1088, 1092 (Ind App, 2004); *In re Guardianship of DMH*, 161 NJ 365, 376–377; 736 A2d 1261 (1999).

when both parents have abandoned the child; in fact, the lack of any other indication that the Legislature intended to require that both parents have abandoned the child indicates that the plural usage may refer to a single parent as well. See MCL 8.3b ("Every word importing the singular number only may extend to and embrace the plural number, and every word importing the plural number may be applied and limited to the singular number.").

C. PROCEDURAL CHALLENGES

Finally, we find no merit in respondent-mother's assertion that various procedural errors require reversal of the adjudication order. These errors are unpreserved and reviewed for plain error affecting substantial rights. *In re VanDalen*, 293 Mich App at 135.

Respondent-mother first argues that the supplemental petition did not allege that she had committed an offense against AL, but rather merely quoted, verbatim, the language of MCL 712A.2(b)(1) and (2). As a result, she argues that she did not have adequate notice of the charges, and was deprived of an opportunity to defend against them.

It is well established that the "fundamental requisite of due process of law is the opportunity to be heard" "at a meaningful time and in a meaningful manner" before an impartial decision maker after being afforded notice of the nature of the proceeding. *In re Rood*, 483 Mich 73, 92; 763 NW2d 587 (2009). Consistent with this due process right, there are specific rules governing the initiation of child protective proceedings. Specifically, "[t]o initiate a child protective proceeding, the state must file in the family division of the circuit court a petition containing facts that constitute an offense against the child under the juvenile code (i.e., MCL 712A.2(b))." *In re Sanders*, 495 Mich at 405, citing MCL 712A.13a(2) and MCR 3.961. The respondent can admit the allegations in the petition, plead no contest to them, or demand a trial to contest the allegations. *Id*. When the petition contains allegations that would constitute an offense under MCL 712A.2(b), "and those allegations are proved by a plea or [by a preponderance of the evidence] at the [adjudication] trial, the adjudicated parent is unfit." *Id*. The adjudicative phase is of "critical importance because the procedures used in the adjudicative hearings protect parents from the risk of erroneous deprivation of their parental rights." *Id*. at 405-406.

Here, the supplemental petition generally alleged that jurisdiction was appropriate under both MCL 712A.2(b)(1) and (2). The supplemental petition also specifically alleged that when AL was removed from respondent-father's care, respondent-mother was incarcerated and unable to provide proper care and custody. Finally, the supplemental petition set forth the events that transpired during these proceedings, including allegations of respondent-mother's inconsistent contact with the agency and AL and her failure to participate in services—particularly a social assessment. These allegations gave respondent-mother sufficient notice of the charges against her and the potential bases for the trial court's assumption of jurisdiction.

Respondent-mother argues that petitioner could not file a supplemental petition without a Children's Protective Services (CPS) investigation and substantiation of the charges. We find no merit to this argument. MCL 712A.19(1) requires petitioner to file a supplemental petition upon becoming aware of and substantiating additional abuse and neglect; it does not forbid petitioner from filing supplemental petitions in other circumstances, such as those present in this case,

including the change of permanency planning goal and the application of *In re Sanders* upon its issuance.

Finally, respondent-mother argues that the trial court erroneously combined the adjudication trial and dispositional hearing. A trial court may enter an order terminating parental rights at the initial dispositional hearing pursuant to a request in an original or amended petition. MCR 3.977(E)(1); MCL 712A.19b(4). Once a court finds that a child is within the jurisdiction of the court, the dispositional phase follows. *In re AMAC*, 269 Mich App 533; 711 NW2d 426 (2006). The adjudicative and dispositional hearings may be combined in one hearing. See MCR 3.973(B). Respondent-mother's reliance on *In re Nunn*, 168 Mich App 203; 423 NW2d 619 (1988), in support of her contention that the trial court erred in holding a combined adjudicative and dispositional hearing, is misplaced. The issue in *Nunn* was that the petition did not request termination of the respondent's parental rights but rather merely sought to have the trial court take jurisdiction over the children. *Id*. at 207. Further, this Court's reference to the necessity for separate adjudicative and dispositional hearings referred to a former court rule. MCR 5.908(A). Here, by contrast, by the time the combined hearing was held, respondent-mother was well aware of the possibility of termination and was able to present evidence related to both adjudication and disposition. None of the parties could realistically have expected that the dispositional phase would take place on another day. Further, although the trial court did not state directly on the record that it had concluded the jurisdictional trial and was moving to the dispositional phase, it can be clearly inferred by a reading of the record that the trial court made separate findings related to adjudication prior to its findings on jurisdiction, and issued separate orders for the adjudication trial and the termination hearing. We find no plain error affecting respondent's substantial rights in this combined proceeding.[7] *In re VanDalen*, 293 Mich App at 135.

III. STATUTORY GROUNDS

Respondent-mother next argues that the trial court erred in finding that statutory grounds for termination were proven by clear and convincing evidence. We disagree. "In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App at 139. The trial court's determinations at the dispositional phase are reviewed for clear error. *Id*.; MCR 3.977(K). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App at 80.

Respondent-mother first argues that the dispositional order issued by the trial court was facially deficient because it was "boilerplate" and lacked required findings. We disagree that

[7] We do note that a trial court could avoid many of the issues raised in cases with combined hearings by clearly indicating on the record when the move from adjudication to disposition has occurred; such an indication would render the record on appeal more amenable to appellate review.

any error in the dispositional order requires reversal in light of the termination order. Following the July 29, 2014 hearing, the trial court entered three orders related to respondent-mother: an "order of adjudication," an "order of disposition," and an order terminating mother's parental rights. It is uncertain why the trial court entered the "order of disposition" in light of its termination of respondent-mother's rights. The appropriate order resulting from the dispositional hearing was the termination order; the separate dispositional order was superfluous. See *In re SLH*, 277 Mich App at 669 n 12 ("An initial order of disposition [an order resulting from the initial dispositional hearing] may be an Order of Disposition [if neither parent's rights are terminated], an Order Terminating Parental Rights [if all parental rights are terminated], or both [if one parent's rights are terminated and the other parent's rights are not terminated]."). Therefore any errors in the dispositional order were harmless. See MCR 2.613(A) ("An error in the admission or the exclusion of evidence, an error in a ruling or order, or an error or defect in anything done or omitted by the court or by the parties is not ground[s] for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court to be inconsistent with substantial justice.").

Additionally, respondent-mother argues that petitioner failed to assess respondent-mother for placement and did not provide her with services. Respondent-mother concedes that petitioner and the trial court did not fail to make reasonable efforts to provide her with services during her incarceration, and takes responsibility for the period of time between release from incarceration on October 29, 2013 and her renewed contact with petitioner on February 14, 2014. She thus limits her argument to the time period of February 14, 2014 to the July 29, 2014 termination hearing. We find her argument to be without merit.

"When a child is removed from a parent's custody, the agency charged with the care of the child is [usually] required to report to the trial court the efforts made to rectify the conditions that led to the removal of the child." *In re Plump*, 294 Mich App 270, 272; 817 NW2d 119 (2011). The agency's obligation to make reasonable efforts toward reunification extends to noncustodial parents. See *In re Rood*, 483 Mich at 121. "The adequacy of the petitioner's efforts to provide services may bear on whether there is sufficient evidence to terminate a parent's rights." *Id*. at 89. "[A trial] court is not required to terminate parental rights if the State has not provided to the family of the child . . . such services as the State deems necessary for the safe return of the child to the child's home." *Id*. at 104.

Respondent principally relies on *Rood* and *In re Mason*, 486 Mich 142, 148-151; 782 NW2d 747 (2010), in making her argument. We find those cases significantly distinguishable from the instant case. For example, in *Rood*, 483 Mich at 110-112, petitioner and the trial court consistently failed to provide the respondent with notice of ongoing proceedings, services, and evaluations available to him, even when both the court and the petitioner possessed the respondent's correct address. Similarly, in *Mason*, 486 Mich at 148-151, the trial court and petitioner failed to offer the respondent the chance to comply with his service plan while incarcerated and failed to allow him a meaningful and adequate opportunity to participate in the case against him.

Here, by contrast, respondent-mother made it impossible for petitioner to offer her services during the relevant time period. After she contacted Scott in February 2014, she did not

return Scott's follow-up call or participate in an assessment so that petitioner could provide her with needed services. Letters were sent to respondent-mother in March and April of 2014 with no response. Respondent-mother never provided any documentation of any drug screens or completion of any services despite being told how she could go about doing so. Although respondent-mother argues that the trial court ordered that, based on her lack of contact up to that point, petitioner was not required to provide services, the record is clear that respondent-mother was provided with information on completing voluntary services and completing an assessment for services. We therefore find that the trial court did not err in failing to hold that petitioner did not make reasonable efforts to reunify respondent-mother with AL. As respondent-mother does not otherwise challenge the trial court's finding that statutory grounds for termination were proven, and does not challenge the trial court's best-interest determination, we therefore affirm the trial court's termination of her parental rights to AL.

Affirmed.

/s/ Mark T. Boonstra
/s/ Henry William Saad
/s/ Christopher M. Murray